

REMARKS

The Examiner is thanked for the performance of a thorough search.

By this amendment, Claims 1-44 have been cancelled. New Claims 45-60 have been added. Hence, Claims 45-60 are pending in the application.

SUMMARY OF REJECTIONS

The Specification is objected to for improperly incorporating subject matter by reference.

Claims 1-44 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent Number 6,401,120 issued to Gamache et al. (“*Gamache*”) in view of U.S. Patent Number 5,659,781 issued to Larson (“*Larson*”).

The rejections are respectfully traversed.

SPECIFICATION HAS BEEN AMENDED TO ADDRESS THE OFFICE

ACTIONS CONCERNS

The Applicants’ specification has been amended herein to recite the serial numbers of the patent applications incorporated by reference. Consequently, it is respectfully submitted that the Office Actions’ objections to the specification have been addressed and overcome.

THE PENDING CLAIMS ARE PATENTABLE OVER THE CITED ART

Claims 1-44 have been cancelled herein; consequently, it is respectfully submitted that the rejections raised by the Office Action with respect to Claims 1-44 have been rendered moot.

Each of new Claims 45-60 recite a combination of elements that is not disclosed, taught, or suggested by the cited art, taken either individually or in combination.

For example, Claim 45 recites the following features:

“A machine-implemented method, comprising the steps of:
a service requestor using an IP address to access a service provided by a
first node within a cluster;

in response to said first node becoming unavailable, automatically configuring a second node of the cluster to respond to requests associated with said IP address;
after said first node becomes unavailable, the service requestor using said IP address to send a message to said cluster related to said service;
and
in response to said message, said second node of the cluster sending a response that indicates an error condition.”

The above-cited combination of features are not disclosed, taught, or suggested by the cited art, either individually or in combination.

The method of Claim 45 exhibits numerous advantages. For example, following the approach of Claim 45, a service requestor accessing a service on a first node using an IP address may immediately receive an indication (such as, for example, a TCP/IP error message) that the service is unavailable when the first node becomes unavailable. Advantageously, the service requestor may perform another action (such as attempting to access the service on another node using a different IP address) faster than if the service requestor had to wait for a time-out to determine that the first node was unavailable. Other advantages and embodiments are described in further detail in the Applicants' patent application.

In sharp contrast, *Gamache* is directed towards forming and operating a cluster from a group of available nodes. *Gamache* discusses several requirements that must be satisfied for a cluster to be formed, e.g., one node of the cluster must possess a majority of the replica members to ensure only one unique incarnation of a cluster can exist at a time (Abstract; Col. 2, lines 11-34). The concept of “a service requestor using an IP address to access a service provided by a first node within a cluster” is absent from *Gamache*. Consequently, it is respectfully submitted that each element of Claim 45 is not disclosed, taught, or suggested by *Gamache*.

Larson is directed towards creating a bi-directional systolic ring network. The network of *Larson* allows a node of a network to concurrently transfer data between multiple nodes of the network in a systolic manner (Abstract). No portion of *Larson* suggests the concept of “a service requestor using an IP address to access a service provided by a first node within a cluster.” Consequently, it is respectfully submitted that each element of Claim 45 is not disclosed, taught, or suggested by *Larson*.

Each of the pending claims contains a combination of elements similar to those discussed above with respect to Claim 45. Thus, each of the pending claims features a combination of elements that are not disclosed, taught, or suggested by the cited art, individually or in combination. Consequently, it is respectfully submitted that each of the pending claims is patentable over the cited art, are each of the pending claims are in condition for allowance.

**TO ESTABLISH PRIMA FACIE OBVIOUSNESS OF A CLAIMED
INVENTION, ALL THE CLAIM LIMITATIONS MUST BE TAUGHT OR
SUGGESTED BY THE PRIOR ART**

As stated in MPEP § 2143.03: “To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” In Re Royka, 180 USPQ 580.

The Applicants admit to being perplexed by the arguments provided by the Office Action supporting the rejection of Claims 1-44. Specifically, to support an obviousness rejection, the Applicant would expect an argument that has the following form: (1) element X is shown in reference A, (2) element Y is shown in reference B, and (3) there is some actual suggestion to combine the references A and B to create the mechanism or technique that has both elements X and Y.

However, the Office Action does not support the obviousness rejections in that manner. Rather, to support the obviousness rejections, not only has each claim been divided into its constituent elements, but also each constituent element of the claim has been finely dissected into a set of short phrases and sentence fragments. The Office Actions then point out how each individual fragment corresponds to a similar fragment in any one of a handful of references. The fragment-to-prior-art correlation appears to have been made without any consideration as to the relationship between the fragments, the meaning of the elements as a whole, and the meaning of the claim as a whole.

It is respectfully submitted that a claim may not be validly rejected simply because each word or phrase in the claim appears in a prior art reference, without regard to what meaning is ascribed to the word or phrase given its placement in the claim.

By way of example, consider a claim to “blowing out one or more candles on a birthday cake in response to being presented with the birthday cake.” By the Office Actions’ logic, this claim may be rejected based on a combination of references that discuss: (a) a hurricane – which shows “blowing,” (b) a 18th century Spanish Mission which was illuminated by a plurality of prayer candles on a candelabra – to show “one or more candles on a,” (c) a police report describing a car accident – to show “in response to” because the accident happened in response to two cars colliding, (d) the Wheel of Fortune® game show – because the reference shows letters that are “presented” to game contestants, (e) a recipe for a cherry sauce to accompany an Angel Food cake – which shows “cake,” and (f) an obituary of Grover Cleveland, the 22nd and 24th President of the United States of America – to show a “birthday.” Clearly, these references, either individually or in combination, do not render obvious “blowing out one or more candles on a birthday cake in response to being presented with the birthday cake” in a manner consistent with a proper interpretation of 35 U.S.C. § 103(a).

By the same token, it is respectfully submitted that the pending claims are patentable over the cited art references.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that all of the pending claims are now in condition for allowance. Therefore, the issuance of a formal Notice of Allowance is believed next in order, and that action is most earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if it is believed that such contact would further the examination of the present application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any fee shortages or credit any overages to Deposit Account No. 50-1302.

Respectfully submitted,

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Date: December 28, 2004

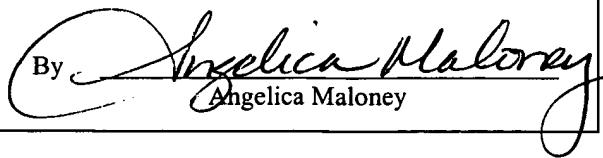
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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

On December 28, 2004

By



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